

Appl. No. 10/810,977  
Armdt. dated December 8, 2005  
Reply to Office Action of September 8, 2005

### **REMARKS/ARGUMENTS**

Applicants' attorney thanks the Examiner for her comments and thoughtful analysis of the present application. Claims 22-36 are presented for the Examiner's consideration. Independent claim 22 has been amended to more clearly define the invention and to include a limitation from claim 24. Support for this amendment can be found in originally filed claims 1, 2 and 8, and at page 5, lines 1-19 and page 7, lines 22-24 of the specification. Claim 23 has been amended to specify the superabsorbent material as a fiber. Support for this amendment can be found in originally filed claim 7 and at page 3, lines 23-26 of the specification. Claim 24 has been amended to delete the limitation which was included in amended claim 22. Claim 25 has been amended to include the verbiage "permanently wettable" and "as measured by the Flotation Time procedure." Support for this amendment can be found in the preamble of this claim and on page 10, line 30 to page 11, line 4 of the specification. Claims 26 and 35 have been amended to correct a grammatical error and to include the verbiage "as measured by the Surface Tension test." Support for this amendment can be found on page 11, lines 5-8. Claim 29 has been amended to more clearly state the claim. Support for this amendment can be found on page 6, line 27 of the specification. Claim 31 has been amended to depend from amended claim 22 rather than amended claim 24. Claim 32 has been amended to ensure proper antecedent basis and to more clearly state the claim. Support for this amendment can be found in amended claim 22 and on page 6, line 27 of the specification. Independent claim 34 has been amended to more clearly define the invention. Support for this amendment can be found in originally filed claims 1, 2 and 8, and in the specification, for example at page 4, lines 20-29; page 5, lines 1-19; page 6, line 27; and page 7, lines 22-24. Claims 1-21 and 37-39 have been canceled.

Pursuant to 37 C.F.R. § 1.111, reconsideration of the present application in view of the foregoing amendments and the following remarks is respectfully requested.

By way of the Office Action mailed September 8, 2005, the Examiner rejected claims 25, 26, 35 and 38 under 35 U.S.C. § 112, second paragraph, for failing to particularly point out and

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distinctly claim the subject matter which the Applicants regard as the invention. This rejection is respectfully **traversed** to the extent that it may apply to the presently presented claims.

The Examiner stated that Claims 25, 26, 35 and 38 lack sufficient antecedent basis for the limitations of these claims, and that the term "saline" has not been defined with respect to a test procedure. Claim 38 has been canceled. Claim 25 has been amended to include the verbiage "as measured by the Flotation Time procedure," and claims 26 and 35 has been amended to include the verbiage "as measured by the Surface Tension Test." In addition, the term "saline" is defined in the specification and in the test procedures as being 0.9% sodium chloride. (See e.g., page 10, line 24 to page 11, line 8). For at least these reasons, Applicants submit that the rejection of claims 25, 26 and 35 has been overcome, and Applicants respectfully request that the rejection of these claims under 35 U.S.C. § 112 be withdrawn.

By way of the Office Action mailed September 8, 2005, the Examiner rejected claims 22-24, 27, 29-32, 34 and 37 under 35 U.S.C. § 102 as allegedly being anticipated and thus unpatentable over U.S. Patent Number 3,989,586 to Bashaw et al. This rejection is respectfully **traversed** to the extent that it may apply to the presently presented claims.

Claim 37 has been canceled.

In accordance with MPEP § 2131, a claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.

Bashaw et al. is directed to a pulverized superabsorbent material. (See e.g., the Examples in Bashaw et al.). It is known in the art that the surfaces created during the pulverization process result in superabsorbent materials that are hydrophilic in nature, as defined by Applicants (i.e., the surfaces have a contact angle of less than 90°). (See e.g., page 4, lines 20-22 of the present application). In contrast, independent claims 22 and 34 of Applicants' invention are directed to a superabsorbent material that is hydrophobic (i.e., has a contact angle that is greater than 90°) because the surface has been hydrophobized during a spinning process. (See e.g., page 4, lines 9-22 of the present application). Although Bashaw et al. disclose that their superabsorbent materials can be fibrous in form, one of ordinary skill in the art would know that a fibrous material formed by pulverization is not the same as a fiber (or other form) formed by a spinning process.

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Therefore, Bashaw et al. do not meet the limitation of a superabsorbent material having a hydrophobic surface, as defined by Applicants.

In addition, Bashaw et al. do not teach using only surfactants that have two functional groups, one that is reactive with the superabsorbent material and one that is non-reactive with the superabsorbent material. Furthermore, Bashaw et al. do not teach an amount of water that is sufficient to activate the hydrophobic surface of the superabsorbent material to promote reaction between the at least one reactive functional group and the hydrophobic surface of the superabsorbent material to form a permanently wettable superabsorbent material, but less than sufficient to cause significant swelling of the superabsorbent fiber. Rather, Bashaw et al. teach utilizing a surfactant that is sufficient to disperse a copolymer in a papermaking furnish or pulp suspension. (See Bashaw et al., column 2, lines 3-5).

Thus, Bashaw et al. do not set forth each and every element of Applicant's invention, as required by MPEP § 2131. Applicants submit that this rejection of independent claims 22 and 34 has been overcome, and Applicants respectfully request that the rejection of these claims under 35 U.S.C. § 102 be withdrawn.

With respect to claims 23, 24, 27, and 29-32, these claims are not anticipated since they are each dependent upon a patentable independent claim, as discussed above. If a given reference does not anticipate the limitations of the independent claim, then any claim depending from the independent claim is not anticipated. See e.g., *In re Fine*, 5 USPQ2d 1596 (Fed. Cir. 1988). For at least these reasons, Applicant submits that this rejection of claims 23, 24, 27, and 29-32 has been overcome, and Applicant respectfully requests that the rejection of these claims under 35 U.S.C. § 102 be withdrawn.

By way of the Office Action mailed September 8, 2005, the Examiner rejected claims 28, 33, 36 and 39 under 35 U.S.C. § 103 as allegedly being obvious to one of ordinary skill in the art at the time the invention was made and thus unpatentable over U.S. Patent Number 3,989,586 to Bashaw et al. in view of U.S. Patent Number 6,217,890 to Paul et al. This rejection is respectfully traversed to the extent that it may apply to the presently presented claims.

Claim 39 has been canceled.

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In accordance with MPEP § 2142, the Examiner has the burden of establishing a *prima facie* case of obviousness by meeting three criteria. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the references must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicants' disclosure. *In re Vaeck*, 947 F.2d 4899 (Fed. Cir. 1991).

The Examiner states that Paul et al. disclose a treated superabsorbent material for use in a diaper comprising a liquid-permeable topsheet, a backsheet attached to the topsheet, and an absorbent structure made with a treated superabsorbent fiber positioned between the topsheet and the backsheet for the benefit of having a highly absorbent material in a relatively thin absorbent article. However, combining the teachings of Paul et al. with Bashaw et al. does not overcome the deficiencies of Bashaw et al., as discussed above. Thus, at least the third prong of MPEP § 2142 (i.e., the references must teach or suggest all the claim limitations) has not been met.

In addition, Bashaw et al. is directed to pulp or paper products having a high absorbency for **aqueous fluids** (see Bashaw et al. Abstract), whereas Paul et al. is directed to an article exhibiting **improved air exchange** within the article during use (see Paul et al. Abstract). Therefore, one of ordinary skill in the art would not be motivated to combine the teachings of Bashaw et al. and Paul et al. in order to arrive at Applicants' invention. Thus, the first prong of MPEP § 2142 (i.e., there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings) also has not been met.

For at least these reasons, Applicants submit that the Examiner has not met her burden of establishing a *prima facie* case of obviousness, and Applicants respectfully request that the rejection of claims 28, 33 and 36 under 35 U.S.C. § 103 be withdrawn.

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For the reasons stated above, it is respectfully submitted that all of the presently presented claims are in form for allowance.

Please charge any prosecutorial fees which are due to Kimberly-Clark Worldwide, Inc. deposit account number 11-0875.

The undersigned may be reached at: (920) 721-4405.

Respectfully submitted,

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#### CERTIFICATE OF TRANSMISSION

I, Bryan R. Rosiejka, hereby certify that on December 8, 2005 this document is being facsimile transmitted to the United States Patent and Trademark Office, Fax No. (571) 273-8300

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